



**Arbitration CAS 2013/A/3071 Ana Beatriz di Rienzo Bulcão v. Fédération Internationale d’Escrime (FIE), award of 12 August 2013**

Panel: Judge Carole Barbey (Switzerland), President; Mr Rui Botica Santos (Portugal); Mr Romano Subiotto QC (United Kingdom)

*Fencing*

*Doping (boldenone; androstatrienedione)*

*Burden of the athlete to establish a departure from the IST by a balance of probability*

*Signature of the doping control form without making any comment about the sample collection process*

*Delay of more than 30 days between the date of the urine sample collection and the date the samples arrived at the laboratory*

*Starting date of the period of ineligibility in case of substantial delay not attributable to the athlete*

- 1. According to the FIE anti-doping rules, the burden is on the fencer to establish, by a balance of probability, a departure from the International Standards for Testing (IST) that could reasonably have caused the Adverse Analytical Finding (AAF). If the fencer does so, the burden shifts to the FIE to prove to the comfortable satisfaction of the Tribunal (or the CAS panel) that the departure did not cause the AAF.**
- 2. The fact that, first, the athlete could not choose the kit and the collection vessel and, second, it was the DCO and not she who closed the bottles and manipulated the seals system cannot establish validly a departure from the IST if the athlete signed the doping control form and certified that the entire process has been performed according to the rules, without making any comment.**
- 3. A delay of more than 30 days between the date of the urine sample collection and the date the samples arrived at the laboratory does not respect the 14 days time limit provided for in the FIE Rules. However, such a departure from the FIE Rules does not lead to the nullity of the result of the analysis performed. That would only be the case, should the athlete reasonably demonstrate that such delay has been the origin of the AAF.**
- 4. The period of ineligibility starts on the date of the hearing decision providing for ineligibility or may start at an earlier date commencing as early as the date of the sample collection in case there has been substantial delay in some aspects of the doping control not attributable to the athlete.**

## **I. PARTIES**

1. Ms Ana Beatriz di Rienzo Bulcão (“Ms Bulcão” or “the Appellant”) is a Brazilian fencer registered in the Brazilian Fencing Federation, born on December 4, 1993, in São Paulo, Brazil.
2. The International Fencing Federation (“FIE”) is the international Federation governing the sport of fencing worldwide and has its head office in Lausanne, Switzerland.

## **II. FACTUAL BACKGROUND**

3. This appeal was filed by Ms Bulcão against the decision (“the Appealed Decision”) rendered on January 7, 2013 by the FIE Doping Disciplinary Tribunal (“the FIE Tribunal”).
4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Background Facts**

5. On March 11, 2012, Ms Bulcão took part in the Pan-American Junior Fencing Championship in Venezuela. After winning the Junior Womens’ Foil Competition, she was selected for an anti-doping control.
6. Ms Bulcão provided the urine sample no 04416 and signed the “sample taking” formular, at the end of the control, together with her representative. The formular indicated the supplements (vitamins and minerals) she had ingested; there is no written comment concerning the procedure followed for the collection of the samples.
7. Sample no 04416, together with other samples, was kept by the Doping Control Officer (“the DCO”) and delivered to the Venezuelan National Anti Doping Offices (“the Venezuelan Offices”) in Caracas on March 13, 2012 in the morning. On April 12, 2012 the sample was sent to the WADA accredited Laboratory in La Havana, Cuba (“the Havana Laboratory”).
8. The analysis of the A-sample no 04416 revealed the presence of boldenone, an exogenous anabolic androgenic steroid classified as a non-specified substance (S1a) under the WADA 2012 Prohibited List, with an estimated concentration of 90 ng/mL.
10. On May 3, 2012, the Havana Laboratory notified the FIE of the Adverse Analytical Finding (“AAF”).

10. On May 21, 2012, the FIE notified Ms Bulcão of the AAF and informed her of her rights to request the analysis of the B-sample, should she not accept the result of the A- sample.
11. On June 4, 2012, Ms Bulcão (as well as her Counsel) requested the B-sample analysis.
12. On June 6, 2012, the FIE provisionally suspended Ms Bulcão from national and international competition with immediate effect until the procedure was completed.
13. The B-sample analysis performed in the Havana Laboratory on June 20, 2012 confirmed the result of the A-sample analysis, i.e. the presence of boldenone in an estimated concentration of 90 ng/mL and the laboratory specified that *“Epi-Boldenone was observed too excreted as sulphate and this metabolite has been reported as a marker of boldenone consumption”*.
14. The photographs taken by the Havana Laboratory on that occasion showed the integrity of both sample A and B. The B cylinder was fully sealed with a red link (*“La muestra B come se puede observar esta totalmente sellada con su presinto rojo”*).
15. At the request of the FIE, and Ms Bulcão having been informed, the remainder of the A-sample was sent to the WADA accredited Laboratory in Cologne, Germany (“the Cologne Laboratory”) for an IRMS analysis of Boldenone and its metabolites.
16. The analytical report of the Cologne Laboratory, dated July 19, 2012, showed that the values of the boldenone and boldenone metabolite indicated an exogenous origin.
17. On request of the FIE, the A-sample was additionally analysed by the Cologne Laboratory with LC/MS for the presence of androstatrienedione (ATD). According to the additional analytical report, dated July 24, 2012, the sample contained aromatase inhibitor ATD and its metabolite (17β-hydroxyandrosta-1,4,6-trien-3-one).
18. On August 2, 2012, Dr Hans Geyer, Deputy Head of the Cologne Laboratory, provided the FIE with a written statement regarding the detection of ATD in A-sample 04416. He explained that such detection indicated *“that the boldenone and the boldenone metabolite, which were also shown to be present in this sample, most probably originate[d] from an application of ATD and not from an application of boldenone. [...] According to [his] knowledge, ATD is actually only available as ingredient of nutritional supplements and no preparation, containing ATD, has yet been approved for medical use. As nutritional supplement, ATD is administered orally. [...] It can be estimated that ATD can be detected with [the Cologne Laboratory] systems for less than one week after the oral application of 50 mg of ATD. The detection time for boldenone and boldenone metabolite is even shorter”*.

## **B. Proceedings before the FIE Doping Disciplinary Tribunal**

19. By letter dated July 25, 2012, the FIE informed Ms Bulcão that proceedings had been opened against her in regard to the alleged anti-doping rule violation and that an FIE Anti-Doping Disciplinary Tribunal (“The FIE Tribunal”) had been constituted to handle the case. She was called for a hearing scheduled for September 12, 2012 and had the right to file written submission, bring forth and propose evidence such as witnesses and experts.

20. On August 29, 2012, Ms Bulcão provided the FIE Tribunal with a written statement of defence and informed that she would attend the hearing together with her Counsel and Dr Bernardino Santi, expert in sports medicine.
21. During the hearing held on September 12, 2012, Dr Bernardino Santi provided the FIE Tribunal with a sample collection kit, named “Cast” (“the Cast kit”), similar to the one used for Ms Bulcão’s urine collection. As reported in the FIE Tribunal’s Decision under point 21: *“He [Dr Santi] commented on the kit and asked the Tribunal to observe that the sample vessel was not closed in a plastic film. The members of the Tribunal also tried to seal the A and B sample containers with the sealing mechanism, in vain. Dr Santi therefore concluded that the kit used did not meet the requirements of the International Standards”*.
22. On her part, Ms Bulcão pointed out various departures from the International Standards for Testing (“IST”) that had happened during the collection process and alleged that she believed her sample vessel could have been manipulated.
23. Further to the hearing, the FIE Tribunal instructed two additional measures.
24. First, the FIE Tribunal mandated the Swiss Laboratory for Doping Analysis to compare the DNA profile of Ms Bulcão with the profile obtained from urine sample 04416A. The Laboratory Report, dated September 20, 2012, indicated that the DNA profiles of the athlete and the sample analyzed in Cologne had the same genetic characteristics. Therefore, *“the results [were] consistent with the hypothesis that the urine sample 4416A [was] coming from the athlete”* with *“a likelihood ratio greater than 1 billion”*
25. Second, on his request, the FIE Tribunal’s President was provided with a Cast Kit by the Venezuelan Fencing Federation, similar to the one used for Ms Bulcão’s urine collection, which he opened before a bailiff on October 31 2012. In his report, the bailiff, after having described the Cast kit and its contents, stated that *“manipulating the sealing mechanism is quite easy for the red cylinder and rather difficult for the blue cylinder”* and *“once the cylinder is sealed, it is impossible to open its lid without cutting the link”*.

### **C. The Decision of the FIE Doping Disciplinary Tribunal**

26. On January 7, 2013, the FIE Tribunal issued its decision (“the Appealed Decision”), ruling that :  
  
*“1. The presence of boldenone and androstatrienedione found in sample 04416 constitutes an anti-doping rule violation in accordance with the FIE and WADA Anti-Doping Regulations.*  
  
*2. Ms Ana Beatriz Bulcão is automatically disqualified of her results in the Pan-American Fencing Championships of March 2012 and is ineligible to compete in fencing competitions for a period of two years starting from June 6 2012”*.
27. Regarding the alleged departures from the IST, the FIE Tribunal came to the conclusion that there was a presumption that the analyzed samples had been carried out in a proper manner

and according to the IST, that no breach in the chain of custody had occurred and that Ms Bulcão had failed to establish, by a balance of probability, a departure from the IST that could reasonably have caused the AAF.

28. The delay of more than 30 days between the urine collection and the arrival of the sample to the Havana Laboratory for analysis had been of no practical effect as Ms Bulcão had not submitted any proof that the sample had not been properly stored during this delay.
29. If departures of the IST had occurred, resulting from the fact that it had been the DCO and not the Athlete who had transferred the urine and closed the bottles, such departures had not been significant as Ms Bulcão had admitted that all had been done in front of her and had signed, at the end of the control, the Doping Control form without mentioning any irregularity in the control process.
30. Regarding the allegation that the Cast kit used was not tamper evident, the FIE Tribunal President had been provided by the Venezuelan Fencing Federation with a sample of the kit used during the Championships and had ensured its efficiency and safety in the presence of a bailiff; therefore, the use of a Cast kit did not constitute a breach of the IST.
31. Furthermore, Ms Bulcão had not given any acceptable reasons why a third party would have tried to sabotage her urine sample.
32. The presence of boldenone in both A and B-samples, shown to be from exogenous origin and being listed as a Prohibited Substance, proved that a violation of the FIE Anti-Doping Regulations (“the FIE Rules”) had been committed by Ms Bulcão; in such a case and pursuant to art. 10.2. of the FIE Rules, the period of ineligibility imposed for a first violation was to be two years.
33. Should the presence of boldenone have been the consequence of an application of ATD, which is a Specified Substance, Ms Bulcão could have claimed the benefit from a reduction of the suspension based on art. 10.4 of the FIE Rules, only provided that (i) she could have proven how the substance (ATD) had come into her body, and (ii) she had had no intention to enhance her sport performance. But she could not give any explanation as to how the prohibited substances had entered her body and only claimed that she never had intended to enhance her performance. Art. 10.4 of the FIE Rules was therefore not applicable. For the same reason article 10.5 of the FIE Rules did not apply.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

#### **A. Preliminary proceedings**

34. On January 23, 2013, Ms Bulcão filed her Statement of Appeal at the CAS.
35. On February 7, 2013, she filed her Appeal Brief together with documents and evidence she intended to rely on.

36. On February 19, 2013, the CAS Court office granted the FIE 20 days to file its respective Answer, pursuant to Article R55 of the Code of Sports-related Arbitration (the “Code”).
37. On March 12, 2013, the Respondent filed its answer, together with written statements given by the five following witnesses and dated March 7 2013.
38. By notice dated March 18, 2013, the CAS Court Office notified the parties that the appeal hearing Panel (the “Panel”) had been constituted as follows: Ms Carole Barbey, Deputy-Judge, as President, Mr Rui Botica Santos, attorney-at-law, and Mr Romano F. Subiotto QC, Solicitor-Advocate, as co-arbitrators. The parties did not raise any objections as to the constitution and composition of the Panel then or at the hearing.
39. By notice dated April 25, 2013, the CAS Court Office informed the parties that the hearing had been fixed on Monday May 13, 2013 and invited them to give the names of all persons attending the hearing.
40. By letters dated April 25, 2013 and May 3, 2013, Mr Cristiano Caús, attorney-at-law and Counsel of Ms Bulcão, informed the CAS Court Office that he would attend the hearing together with his client and called Dr Bernardino Santi as an expert.
41. By letter dated May 2, 2013, Mr Jorge Ibarrola, attorney-at-law and Counsel of the FIE, informed the CAS Court Office that he would attend the hearing together with Mr Claude Ramoni, co-Counsel of the FIE and Ms Nathalie Rodriguez, Chief Executive Officer of the FIE. He called Mr Eduardo Gutierrez, Dr Henry José Aceituno, Ms Norma Caruso, Mr Numa Rincon and Ms Griselda Benitez Pacheco as witnesses and Dr Hans Geyer as an expert. He indicated that all above-mentioned persons were ready to give their oral evidence by phoneconference.
42. During a procedural conference call, held on May 8, 2013, the parties agreed that, due to the written statements provided by the five witnesses, only Mr Eduardo Gutierrez and Dr Henry José Aceituno would be heard by phoneconference. The written statements of those witnesses may be summarised as follows:
43. Mr Henry José Aceituno, DCO of the National Anti-Doping Commission of Venezuela (“the Venezuelan Commission”) had proceeded to collect the urine sample of Ms Bulcão on March 11, 2012. He stated that in accordance with the routine for this kind of proceedings, he gave her the bottles inside the original plastic packaging of the trademark Cast and explained to her how to use it. After having filled the plastic bottle with her urine, Ms Bulcão split the content into two bottles that she closed personally with the respective seals of red and blue colour. The two bottles were then put into an isotherm bag which the Athlete also closed and sealed with the appropriate blue ribbon. At no moment had Ms Bulcão complained, either about any possible difficulty in manipulating the bottles, or about the method of closing them or applying the appropriate seals.
44. Ms Norma Caruso, DCO of the Venezuelan Commission, stated that on March 13, 2012 she had received from the hands of Mr Aceituno an isothermic bag containing bottles of urine

samples. The isotherm bag was closed and the seal of blue colour was intact; therefore, there had been no problem of irregularity to be reported. She had stored the bags in the Venezuelan offices pursuant to and in accordance with the applicable anti-doping rules relating to the chain of custody.

45. Mr Eduardo Gutierrez, Coordinator of the Venezuelan Commission, explained that according to an agreement with the Havana Laboratory all samples taken in Venezuela were usually sent to Cuba to be analyzed. As shipments by DHL were long and not always reliable, the Venezuelan Commission used to gather as many samples as possible to have all of them transported at the same time to Cuba by a special commissioner who travelled personally to Cuba; there was an average of about fifteen trips per year to Cuba. In the case in point, the isotherm bags containing bottles full of urine samples which arrived on March 13, 2012 remained in the offices for thirty days only because the Venezuelan Commission had been waiting to have a sufficient number of samples to organize a specific transportation to Cuba; the samples had been stored in the offices during all that time in accordance with the strictest requirements of the chain of custody.
46. Mr Numa Rincón, DCO of the Venezuelan Commission, stated that on April 12, 2012 Ms Norma Caruso had handed him an undetermined number of samples in order for him to transport them from Venezuela to the Havana Laboratory. He certified that the isotherms bags containing the bottles had all been duly closed with the seal of blue colour intact. On the following day, April 13, 2012, he had personally remitted all the isotherm bags to the lady in charge of the Havana Laboratory; at that time, all the isotherm bags had still been duly closed and sealed with the blue ribbon being intact.
47. Ms Griselda Benitez Pacheco, technician at the Havana Laboratory, stated that on April 13, 2012, Mr Numa Rincón had delivered to her, in a cardboard box, various athletes' urine samples to be analyzed. The bag and the bottles were duly closed and the seals were intact and could not have been opened since the moment they had been closed. The only irregularity that she had noticed and reported was that the samples had arrived to the Havana Laboratory more than fourteen days after their collection.

**B. The hearing held on May 13, 2013**

48. The Panel was assisted at the hearing by Ms Louise Reilly, Managing Counsel & Head of CAS Mediation. The parties raised no objection to the composition of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard had been respected. During the hearing, the statements of the persons heard were as follows:

**a. Ms Ana Beatriz Bulcão**

49. Ms Bulcão indicated that she had already been subjected to several anti-doping controls prior to March 2012.

50. On March 11, 2012, she had been accompanied by her coach, Mr Correa, who had been beside her during the whole doping control process. When arriving at the Doping Control Station, she had had no choice between the kits that were available, as the DCO handed over to her a kit out of which the collection vessel was separated. She did not know that she could complain about this situation. She learned later that she had been the only athlete to have received a Cast kit.
51. The DCO had been doing the whole doping control process himself, among others putting the urine in the bottles and then closing the seals. After having sealed the cylinders, the DCO had not turned the bottles upside down to check that no drop could come out and that they were properly sealed.
52. Dr Bernardino Santi was not her personal doctor but the physician of the Brazilian Fencing Federation. In this capacity, she used to call him to get advice on the food and beverages she could ingest; she had never taken anything that had not been previously agreed by Dr Santi or another doctor or physician. In the case in point, she had only taken the medicines reported on the doping control form of March 11 2012, which were two vitamin supplements: Vitamin C and Materna.
53. Regarding Materna, this nutritional supplement had been prescribed to her mother to recover from a surgery; her mother had called Dr Santi, at the end of 2011, who had confirmed that, as a fencing athlete, she could herself take such a supplement without any problem. She had been taking Materna continuously and the product was bought by her mother.
54. During the Pan-American Championship of March 2012, nobody gave her a pill or a nutritional supplement or anything else. She would anyway never have accepted anything proposed by anybody.
55. She still does not know when and where she could have taken ATD and, therefore, cannot explain how the substance could have entered her body.

**b. *Dr Bernardino Santi***

56. Dr Santi explained that he works as a physician and a DCO for various federations and that many athletes, among them Ms Bulcão, come to him to ask about food or nutritional supplements they are allowed to take. When he knows about the product and the laboratory which produces it, he can answer the athlete right away; if not, he recommends the athlete not to ingest anything before he makes the necessary analysis and controls.
57. In March 2012, Ms Bulcão's mother - who was taking Materna to recover from an illness - called him to ask whether her daughter could take this product as a nutritional supplement and he answered positively, as Materna only contains vitamins and no prohibited substance; it is used mainly by girls as a general supplement. As he knew about the composition of the product Materna, he could give an immediate positive answer without making any research.

58. When working as a DCO at various Championships, he never used Cast kits but only Bereg Kits (another trademark). In summer 2012, he worked as a DCO for a beach volley competition in Venezuela and coincidentally happened to handle his doping controls in the same room as the Venezuelan Commission DCO and these were using Cast kits. At that time, he was already aware of Ms Bulcão's disciplinary proceeding and was given a Cast kit in perspective of the hearing before the FIE Tribunal; he tried to manipulate a Cast kit and found it very difficult to seal.

*c. Mr Eduardo Gutierrez*

59. Mr Gutierrez confirmed his written statement of March 7, 2013. He explained that when receiving the samples at the Venezuelan Offices on March 13, 2012, he checked that all seals of all samples were intact; it was part of his duties to verify that the seals were in accordance with the International Standards. As the samples were to be stored, they were immediately frozen at a temperature of -15°C according to the same International Standards. During the storage, which lasted for 30 days, he regularly controlled that they were kept frozen, as he is always very concerned with the respect of the rules of the chain of custody. The delay of 30 days was due to the fact that the Venezuelan Commission always waits to have a minimum of 50 samples before organizing a special transportation to Cuba. The samples were then placed in a closed thermic bag and transported frozen from the Venezuelan Offices to the Airport and then to Cuba through a commercial flight (flight duration: 2.30 hours) where they arrived still frozen.

*d. Dr Henry José Aceituno*

60. Dr Aceituno confirmed his written statement of March 7, 2013. He had been trained as a DCO by the Venezuelan Commission. On March 11, 2012, he carried out 12 doping controls, 4 of them having concerned Brazilian athletes. All the kits were on the table of the Doping Control Station and the athletes could come and choose one. There were both Bereg and Cast kits at disposal as there were not enough kits of one type. All elements of the kit, including the collection vessel, were in the same bag closed; the athletes could open the bag to take the elements out. The Athletes were always accompanied by a delegate.

61. All athletes, including Ms Bulcão, had been doing the whole control process themselves, or with their coach, such as transferring the urine into the two bottles, then putting the bottles in the metallic cylinders, closing the cylinders with the seals and finally putting the bottles into the isotherm bag and closing it. He never participated in the control process, even partially, and everything was done by the Athletes. He just watched and fulfilled the doping form with the Athlete, asking in particular what kind of medicines he/she was taking.

62. All Athletes had been satisfied and confident with the control procedure and nobody made any remark or complaint. They were all comfortable with the doping control procedure.

63. He remembered Ms Bulcão as she had been the last to be tested and had had some problems in succeeding to deliver the urine. When she arrived, there were still several kits at her disposal

on the table. Therefore, he could certify that Ms Bulcão did all the doping control process herself and did not complain when signing the form.

64. After the end of the 12 doping controls, he was responsible for keeping the samples until March 13, 2012; he had been provided for by the Venezuelan Commission with proper equipment in his hotel room to store the samples frozen in accordance with the IST in a special refrigerator under his sole custody.
65. He is accustomed to use both Berek and Cast kits for doping controls and, for various practical reasons, personally finds the Berek kit more convenient; in particular, the Cast kit ribbons are stiff and can only be introduced progressively, little by little. Nevertheless, the Cast kit is fully reliable and can be closed and sealed with all confidence.

*e. Dr Hans Geyer*

66. Dr Hans Geyer confirmed the three written reports dated July 19, 2012, July 24, 2012 and March 8, 2013.
67. The substance ATD leads to substance boldenone and boldenone metabolites; in case ATD is taken, the analysis shows the presence of the ATD parent components and ATD metabolites. That had been the case with sample 04416A, reason for which he had come to the conclusion that the presence of boldenone most probably originated from an application of ATD and not from an application of boldenone.
68. In case of presence of boldenone, an analysis for presence of ATD is performed to prevent the wrong conclusion that boldenone comes from application of boldenone and not ATD, as boldenone is a non-specified prohibited substance which leads to the most severe sanctions, contrary to ATD which is a specified substance.
69. ATD is an aromatase inhibitor which prevents the formation of oestrogens and increases the testosterone level; the effect on the testosterone level is very low and that is why ATD is not considered as an anabolic steroid. When ATD is taken as a postcycle of the use of anabolic steroid, it is possible that all anabolic steroids present in a urine sample disappear and cannot be detected anymore.
70. If ATD is taken to influence the testosterone level, the urine analysis should then show an unusual steroid profile. In the case in hand, Ms Bulcão's urine showed a normal steroid profile with no significant increase of testosterone.
71. ATD has never been approved as a medicine and is only known as a nutritional supplement which is taken only orally. Some nutritional supplements containing ATD are well known and are used for aromatase inhibiting effects which entails increase of testosterone level and maybe fat loss. He had never heard of a nutritional supplement called Materna.

72. There has been several examples of nutritional supplements faked and adulterated with ATD; in such cases, the label of the product only indicates the presence of vitamins with inaccurate names not recognizable by the consumer.
73. All experiences made with nutritional supplements containing ATD with a concentration of 50 ng have shown that the boldenone and boldenone metabolites resulting from ATD can be detected for a maximum of one week after the ingestion. It is impossible to find ATD or boldenone in an analysis one month or more after the ingestion, even with a concentration of 90 ng.
74. Storage conditions of the samples 04416 could not lead to the presence of ATD or boldenone, as the IRMS analysis had revealed the presence of boldenone of exogenous origin; had boldenone be produced by bacteria in the urine, the analysis would have shown endogenous origin, which had not been the case.
75. The presence of metabolites clearly indicates that the ATD has passed through the body and has not been thrown into the urine, as ATD and boldenone metabolites have been found in the samples and these metabolites cannot be produced commercially.
76. The possibility of a mixture of sample 04416A with another urine containing ATD and boldenone cannot be excluded but seems to have been impossible, as the added urine would have had to contain an extremely high concentration of boldenone and ATD and such a manipulation would be extremely difficult to perform; moreover, the DNA of only one person was found in sample 04416A. Therefore, ingestion of ATD is the only reasonable explanation for the presence of said substance in the urine.
77. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings and that they had been given the opportunity to fully present their cases.
78. On May 21, 2013 and on request of the Panel, Dr Bernardino Santi sent, through Ms Bulcão's Counsel, the analysis report of the Composition of the Materna nutritional supplement manufactured by Wyeth Company which happened to contain exclusively various vitamins and mineral salts.
79. Invited to make his comments on the certificate of analysis, the FIE Counsel, in a letter dated May 24, 2013, indicated that Materna did not seem to be the source of the prohibited substance ATD/Boldenone, which confirmed that Ms Bulcão had failed to provide any explanation as to the presence of said substance in her body.

#### IV. SUBMISSIONS OF THE PARTIES

##### The appellant's submissions, in essence, may be summarized as follows:

80. In her appeal brief, dated February 7, 2013, the Appellant requested the CAS to rule as follows:

*“(A) The appeal of Ms Bulcão is admissible*

*(B) The decision rendered by the FIE Doping Disciplinary Tribunal, in the matter of Ms Bulcão, is set aside.*

*(C) Ms Bulcão is not sanctioned for any further period of ineligibility beyond the period of provisional suspension she had already served, 7-months from 6<sup>th</sup> June 2012 to 7<sup>th</sup> January 2013;*

*(D) In case of sanction, the period of ineligibility is commenced on 11<sup>th</sup> March 2012, the date of the sample collection, based on article 10.9.1 of the FIE Anti-Doping Rules, inasmuch as (i) the Athlete's result in the Pan-American Fencing Championships has been cancelled by FIE; (ii) she has never competed since that championship; and (iii) the FIE disciplinary process lasted 10-months”.*

81. First, the Appellant claimed that various departures of the IST had occurred during the sample collection, insofar as (i) she had been given the collection kit, a Cast kit, and the collection vessel instead of choosing it herself, (ii) the DCO, and not herself, had put the urine in the two bottles, and (iii) the DCO, and not herself, had closed and sealed the cylinders.

82. The sealing mechanism of a Cast kit is not tamper evident, as far as it cannot be sealed properly, as it had been demonstrated with the kit brought before the FIE Tribunal at the hearing of September 12, 2012; during the sample collection, she could not have seen whether or not the DCO had managed to properly close the cylinders.

83. The samples had been stored for 30 days before having been transported to the Havana Laboratory; during this delay a break in the chain of custody could have happened, as any person could have put a prohibited substance in the Athlete's urine or any contamination by other means had been possible.

84. All these departures of the IST could have reasonably caused the AAF and had been proved by the Athlete and not only alleged; therefore, the burden of proof had been reversed and it was for the FIE to establish that the departures had not caused the AAF. Nevertheless, in its appealed decision, the FIE Tribunal had only stated that there was a presumption that the analyzed samples had been carried out in a proper manner and according to the IST, without examining the alleged departures.

85. Second, and should the analysis be considered valid, the Appellant requested the reduction of the sanction imposed resulting from the use of a specified substance. She explained that, according to the written statement of Dr Hans Geyer, dated August 2, 2012, the detection of ATD in the A-sample indicated that the boldenone and the boldenone metabolite, also shown to be present in this sample, originated from an application of ATD and not from an application of boldenone. However, in the WADA prohibited list, ATD is listed as an aromatase inhibitor in group S4 and not as an anabolic steroid like boldenone. She reproached

the FIE Tribunal for having based its decision and the sanction on use of boldenone only and not on use of ATD.

86. According to article 4.2.2. and 10.4 of the FIE Rules, ATD is considered as a specified substance and entitles the athlete to a reduction of the period of ineligibility when the fencer can establish that he/she had no intent to enhance his/her performance. The Appellant claimed that she never had intended to enhance her performance; she doesn't know how and when she could have taken ATD. Furthermore, ATD does not benefit the practice of fencing as it *“generates muscle definition, causing swelling in muscle tissue, known as hypertrophy; or, hypertrophy increases the person's weight and inhibits agility, stretching and amplitude, necessary characteristics for the practice of fencing”*.
87. In the Appellant's opinion, the presence of ATD had originated from a contamination due to an error in the procedures. Therefore, and even had she taken some supplement with ATD by mistake, she should benefit from a reduction of the sanction based on article 10.5. of the FIE Rules, as she had committed no fault or negligence. In fact, she only *“eats and drinks and takes under strict instruction of all [her] physicians and nutritionists”*; Furthermore, youth and lack of experience are relevant factors.
88. In conclusion and due to the proven departures from IST, the AAF must be considered invalid. Should it not be the case, the period of ineligibility shall be reduced to the 7 months already served and shall start on the date of the sample collection.

**The respondent's submissions, in essence, may be summarized as follows:**

In its answer, dated March 12, 2013, the Respondent submitted the following:

89. The presence of a prohibited substance in the Appellant's sample was proven, as the Havana Laboratory had detected the substance boldenone and its metabolites in both A and B-samples provided by the Appellant and as the Cologne Laboratory had confirmed the exogenous origin of the substance; furthermore, this Laboratory detected the presence of prohibited substance ATD and its metabolite in the Appellant's sample.
90. The Appellant had failed to demonstrate any departure from standards, rules or policies which could reasonably have caused the adverse analytical finding.
91. The Cast kit used for the sample collection of the Appellant, on March 11, 2012, had complied with all requirements provided for under the IST and the FIE Rules. In fact, according to the report of the bailiff who examined an identical Cast kit on October 31, 2012, even if it may be quite difficult to seal the cylinders with one of the two ribbons, once sealed, each cylinder's cap could only be opened by cutting the sealed ribbon, leaving a visible mark. In the case in hand, the Havana Laboratory stated that when received the samples had been appropriately sealed and the photographs of the B-sample taken showed that the sealing system of the Cast kit had been intact.

92. The DCO confirmed in his statement that it had been the Athlete herself who had filled the two bottles and sealed the cylinders. Furthermore, the Appellant had recognized having been present when the DCO had allegedly manipulated the bottles or seals.
93. The Appellant and her representative both signed the doping control form without making any comment, confirming in that way that they had agreed with the complete sample collection proceedings.
94. The integrity, identity and security of the Appellant's samples had been protected until arrival at the Havana Laboratory without any breach of the chain of custody. All persons involved and responsible in the chain of custody had confirmed that the samples had been appropriately stored in isotherm bags duly sealed and, then, transported to the Laboratory in conditions which ensured their integrity.
95. It was true that the Appellant's samples were received by the Havana Laboratory more than 14 days after their collection, which constitutes a departure from article 5.9.1.9 of the FIE Rules. Nevertheless, the Appellant had failed to establish that such a delay could have caused the Adverse Analytical Finding; on the contrary, Mr Gutierrez, Coordinator of the Venezuela Commission, explained that the delay was due to an Agreement with the Havana Laboratory to only send samples when sufficient numbers with a specific person ensuring the transportation to la Havana and confirmed that, in the case in point, the samples had been stored within the 30 days delay in conditions satisfactory to the International Standards.
96. The IRMS analysis by the Cologne Laboratory had established the exogenous origin of the boldenone found in the sample, which meant that the origin of the substance had been the intake of a substance and not a conversion of endogenous substance during long term storage. The DNA profile made by the same Cologne Laboratory revealed that only one female DNA had been detected in the sample and the comparison with the Appellant's DNA confirmed that the sample analysed in the Cologne Laboratory originated from the Appellant. This showed that it was impossible that the Appellant's sample could have been tampered with or contaminated.
97. Regarding the sanction imposed, article 10.2 of the FIE Rules stipulates that for a first violation the period of ineligibility shall be a two-year period. To claim any entitlement to a reduction of the period of ineligibility, according to article 10.4 or 10.5 of the FIE Rules, the Appellant had first to demonstrate how the specified substance entered her body and then that she had no intent to enhance her sport performance or had committed no fault or negligence. In the case at hand, the Appellant had been unable to explain how the prohibited substance ATD had entered her body, only claiming that it had been due to a contamination or errors in the sample collection and storage proceedings. For that sole reason, she did not meet the conditions stipulated in article 10.4 and 10.5 of the FIE Rules.
98. As to the start of the period of ineligibility, it had been the Appellant's choice not to accept the AAF of the A-sample and she had to bear the consequences of a longer procedure; therefore, she could not submit that the period of ineligibility start on an earlier date than the beginning of the provisional suspension.

**V. ADMISSIBILITY**

99. Article 13.2.6 of the FIE Rules provides that:

*The time to file an appeal to CAS shall be twenty-one (21) days from the receipt of the decision by the appealing party (...).*

100. The Appellant received the Appealed Decision on January 7, 2013 and filed her appeal on January 23, 2013, followed by her brief of Appeal on February 7, 2013.

101. Having been filed within the delay of 21 days after having received the Appealed Decision, the appeal is admissible.

**VI. JURISDICTION**

102. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

103. Article 13.2.1 of the FIE Rules provides as follows:

*In cases arising from participation in an International Event or in cases involving International-Level Fencers, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.*

104. The Appealed Decision has been the last decision that could be rendered by the FIE authorities. The jurisdiction of the CAS in this matter is undisputed by the Respondent, and was further confirmed by the parties' signing the Order of Procedure.

**VII. APPLICABLE LAW**

105. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

106. With regards to the collection of urine samples, the relevant provisions of the FIE Rules are the following:

## **“5.9 Procedures**

### **5.9.1. Collection of Urine Samples at an FIE Competition.**

**5.9.1.1** *Each Fencer asked to provide a Sample shall also provide information on an official Doping Control Form. The Fencer’s name, his country, the code number of the sample and the event identification will be entered into the form. The Fencer shall declare any medication and nutritional supplements that he/she has used in the preceding seven (7) days. The form shall also provide the names of the people present at the Doping Control Station involved with the obtaining of the Sample, including the Anti-Doping Officer and the Doping Control Officer (DCO) in charge of the station. Any irregularities must be registered on the form.*

(...)

**5.9.1.2** *The Fencer shall select a sealed collection vessel from a number of such vessels, visually check that it is empty and clean, and proceed to provide a minimum of 90 ml of urine under the direct supervision of, and within the view of, the DCO or appropriate official who shall be of the same gender as the Fencer. To ensure authenticity of the Sample, the DCO will require such disrobing as is necessary to confirm the urine is produced by the Fencer. No one other than the Fencer and the DCO or appropriate official shall be present when the urine sample is collected.*

(...)

**5.9.1.4** *When the Fencer has provided the required volume of urine, he or she shall select from a number of such kits a sealed urine control kit, containing two containers for Samples A and B. The Fencer shall check to be sure the containers are empty and clean.*

**5.9.1.5** *The Fencer, or his representative, shall pour approximately two-thirds of the urine from the collection vessel into the A bottle and one-third into the B bottle which are then sealed as provided for in the International Standard for Testing. Having closed both bottles the Fencer shall check that no leakage can occur. The DCO may, with permission of the Fencer, assist the Fencer with the procedures in this article 5.9.1.5. The Fencer must also verify at each step in the doping control procedure that each bottle has the same code and that this is the same code as entered on the doping control form.*

**5.9.1.6** *The Fencer shall certify, by signing the Doping Control Form (see art. 5.9.1.1), that the entire process has been performed in compliance with the procedures outlined above. The Fencer shall also record any irregularities or procedural deviations he/she identifies. Any irregularities or procedural deviations identified by the Fencer’s representative (if present, the DCO, the Anti-Doping Officer or station staff shall be recorded on the form. The form will also be signed by the Fencer’s accredited representative (if present).*

**5.9.1.7** *The accumulation of Samples may take place over several competitions sessions before dispatch to the laboratory. During this time, the Samples must be kept under security. If there is prolonged delay in dispatching the Samples to the laboratory, storage in a cool, secure place is necessary to ensure no possible deterioration could occur. The organising committee of the Competition shall be responsible for the secure transport of the containers to the accredited Laboratory as soon as possible after doping control.*

(...)

**5.9.1.9** *The national federations/ competition organisers are required to reach an agreement with the WADA-accredited laboratory(ies) to ensure that the doping control analyses are performed in the shortest possible time:*

*- within 15 days for a World Cup Competition*

*- within 48 hours for a World Championship*

*(...)*”.

107. Furthermore, the relevant provisions of the International Standards for Testing are the following:

**“6.3 Requirements for preparing for the Sample Collection Session**

*6.3.4 The ADO (Anti-Doping Organization) shall only use Sample Collection Equipment systems which, at a minimum, meet the following criteria. They shall:*

*a) Have a unique numbering system incorporated into all bottles containers, tubes or other item used to seal the Sample;*

*b) Have a sealing system that is tamper evident;*

*c) Ensure the identity of the Athlete is not evident from the equipment itself; and*

*d) Ensure that all equipment is clean and sealed prior to use by the Athlete”.*

**“Annex D - Collection of urine Sample**

**D.4 Requirements**

*(...)*

*D.4.3 The DCO shall instruct the Athlete to select a collection vessel.*

*D.4.4 When the Athlete selects a collection vessel and for selection of all other Sample Collection Equipment that directly holds the urine Sample, the DCO will instruct the Athlete to check that all seals on the selected equipment are intact and the equipment has not been tampered with. If the Athlete is not satisfied with the selected equipment, he/ she may select another. If the Athlete is not satisfied with any of the equipment available for selection, this shall be recorded by the DCO. If the DCO does not agree with the Athlete that all of the equipment available for the selection is unsatisfactory, the DCO shall instruct the Athlete to proceed with the Sample Collection Session. If the DCO agrees with the Athlete that all of the equipment available for the selection is unsatisfactory, the DCO shall terminate the collection of the Athlete’s urine Sample and this shall be recorded by the DCO.*

*D.4.5 The athlete shall retain control of the collection vessel and any sample provided until the Sample is sealed, unless assistance is required by an Athlete’s disability*

*(...)*

*D.4.12 The DCO shall instruct the Athlete to select a Sample collection kit containing A and B bottles in accordance with Clause C.4.4.*

*D.4.13 Once a Sample collection kit has been selected, the DCO and the Athlete shall check that all code numbers match and that this code number is recorded accurately by the DCO. If the Athlete or DCO finds that the numbers are not the same, the DCO shall instruct the Athlete to choose another kit in accordance with Clause C.4.4. The DCO shall record the matter.*

*D.4.14 The Athlete shall pour the minimum Suitable Volume of Urine for Analysis into the B bottle (to a minimum of 30 mL), and then pour the remainder of the urine into the A bottle (to a minimum of 60mL). If more than the minimum Suitable Volume of Urine for Analysis has been provided, the DCO shall ensure that the Athlete fills the A bottle to capacity as per the recommendation of the equipment manufacturer. Should there still be urine remaining, the DCO shall ensure that the Athlete fills the B bottle to capacity as per recommendation of the equipment manufacturer. The DCO shall instruct the Athlete to ensure that a small amount of urine is left in the collection vessel, explaining that this is to enable the DCO to test that residual urine in accordance with Clause D.4.17.*

*(...)*

*D.4.16 The Athlete shall seal the bottles as directed by the DCO. The DCO shall check, in full view of the Athlete, that the bottles have been properly sealed”.*

108. Regarding the anti-doping rules violation and its consequences, the relevant provisions of the FIE Rules are the following:

**“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS**

*Fencers and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.*

*The following constitute anti-doping rule violations:*

**2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Fencer’s Sample**

**2.1.1** *It is each Fencer’s personal duty to ensure that no Prohibited Substance enters his or her body. Fencers are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use of the Fencer’s part be demonstrated in order to establish an anti-doping violation under Article 2.1*

**2.1.2** *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Fencer’s A Sample where the Fencer waives analysis of the B Sample and the B Sample is not analysed; or, where the Fencer’s B Sample is analyzed and the analysis of the Fencer’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Fencer’s A Sample.*

**2.1.3** *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Fencer’s Sample shall constitute an anti-doping rule violation.*

*2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substance that can also be produced endogenously”.*

## **“ARTICLE 3 PROOF OF DOPING**

### **3.1 Burdens and Standards of Proof**

*The FIE and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the FIE or its National Federation has established an anti-doping rule violation to the comfortable satisfaction of the Doping Disciplinary Tribunal bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Fencer or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the Fencer must satisfy a higher burden of proof.*

### **3.2 Methods of Establishing Facts and Presumptions**

*Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*

*3.2.1 Wada-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Fencer or other Person may rebut this presumption by establishing that a departure from the International Standard occurred which could reasonably have caused the Adverse Analytical Finding.*

*If the Fencer or other Person rebuts the preceding presumption by showing that a departure from the International Standard occurred which could reasonably have caused the Adverse Analytical Finding, then the FIE or its National Federation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*

*3.2.2 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Fencer or other Person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred, then the FIE or its National Federation shall have the burden to establish that such a departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.*

*3.2.3 The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the Fencer or other Person to whom the decision pertained of those facts unless the Fencer or other Person establishes that the decision violated principles of natural justice.*

*3.2.4 The Doping Disciplinary Tribunal in a hearing on an anti-doping rule violation may draw an inference adverse to the Fencer or other Person who is Asserted to have committed an anti-doping rule violation based on the Fencer’s or other Person refusal, after a request made in a reasonable time in advance of the hearing, to*

*appear at the hearing (either in person or telephonically as directed by the tribunal) and to answer questions either from the Doping Disciplinary Tribunal or from the Anti-Doping Organization asserting the anti-doping rule violation”.*

## **“ARTICLE 4 THE PROHIBITED LIST**

### **4.1 Incorporation of the Prohibited List**

*These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code. The FIE will make the current Prohibited List available to each National Federation, and each National Federation shall ensure that the current Prohibited List is available to its members and constituents.*

### **4.2 Prohibited Substances and Prohibited Methods Identified on the Prohibited List**

#### **4.2.1 Prohibited Substances and Prohibited Methods**

*Unless provided otherwise in the Prohibited List and/or a revision, the Prohibited List and revisions shall go into effect under these Anti-Doping Rules three months after publication of the Prohibited List by WADA without requiring any further action by the FIE or its National Federations. As described in Article 4.2 of the Code, the FIE may request that WADA expand the Prohibited List for the sport of fencing. The FIE may also request that WADA include additional substances or methods, which have the potential for abuse in the sport of fencing, in the monitoring program described in Article 4.5 of the Code. As provided in the Code, WADA shall make the final decision on such requests by the FIE.*

#### **4.2.2 Specified Substances**

*For purposes of the allocation of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances”.*

## **“ARTICLE 10 SANCTIONS ON INDIVIDUALS**

*(...)*

### **10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods**

*The period of Ineligibility imposed for a violation of art. 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6 are met:*

*First violation: Two (2) years’ Ineligibility.*

(...)

#### **10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances**

*Where a Fencer or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Fencer's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*

*First violation: At a minimum, a reprimand and no period of Ineligibility from future Events and, at a maximum, two (2) years of Ineligibility.*

*To justify any elimination or reduction, the Fencer or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the Doping Disciplinary Tribunal the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Fencer or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.*

#### **10.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances**

##### **10.5.1 No Fault or Negligence**

*If a Fencer establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Fencer's Sample in violation of Article 2.1 (presence of Prohibited Substance), the Fencer must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.*

##### **10.5.2 No Significant Fault or Negligence**

*If a Fencer or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in a Fencer's Sample in violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Fencer must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.*

(...)

### **10.9 Commencement of Ineligibility Period**

*Excepted as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any Period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed.*

#### **10.9.1 Delays not Attributable to the Fencer or other Person**

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Fencer or other Person, the FIE or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred”.*

## **VIII. MERITS**

109. In substance, three questions are at the heart of the matter in dispute:

- (i) whether there have been departures of the IST which lead up to the nullity of the AAF, and if not
- (ii) whether there can be a reduction of the imposed sanction,
- (iii) what should the date of the start of the sanction be.

### **A. Dispute on the validity of the Adverse Analytical Finding**

110. According to article 3.2.2 of the FIE Rules, the burden is on the fencer to establish, by a balance of probability, a departure from the IST that could reasonably have caused the AAF. If he does so, the burden shifts to the FIE to prove to the comfortable satisfaction of the Tribunal (or the Panel) that the departure did not cause the AAF.
111. The Appellant submits that the FIE Tribunal erred as it only stated in its decision that there was a presumption that the proceedings for the sample collection and its storage had been carried out according to the IST, although she had proven that various departures had occurred which could have caused the AAF. Nevertheless, when reading the decision, it appears that under the heading “*the Athlete’s allegations of irregularities during the sample collection process*” the FIE Tribunal did examine in detail all the alleged departures of the IST and came to the conclusion that the Appellant failed to demonstrate any departure which could reasonably have caused the AAF. The grievance is therefore without grounds.
112. The Appellant claims that the two following departures occurred during the sample collection process: first, she could not choose the kit and the collection vessel and, second, it was the DCO and not she who closed the bottles and manipulated the seals system.

113. At the hearing of May 13, 2013, Dr Henry Aceituno, DCO who had carried out the doping controls on March 11, 2012, confirmed that there were several kits on the table of the doping control station and that each athlete could choose one; all elements were in the kit. Then, all Athletes, including Ms Bulcão, did the whole control process themselves or with their coach, such as closing the bottles with the seals and putting the bottles into the isotherm bag.
114. Moreover, the Panel refers to the doping control form signed by all persons involved at the end of the doping control process. According to article 5.9.1.6 of the FIE Rules, any irregularity or procedural deviation identified by the fencer, his representative, the DCO or any member of the staff has to be recorded on the form; by signing the form, the fencer, and his/her representative, if present, certify that the entire process has been performed according to the rules, mentioning any eventual irregularity identified.
115. In the case in hand, the Appellant indeed asserted that Dr Aceituno asked her to just sign the form without informing her of her right to make comments on the doping control process. Nevertheless, it appears that she had already been subject to doping controls before March 11, 2012 and was therefore aware of the proceedings. Above all, she was accompanied by her representative, who happened to be her coach, and whose job was precisely to assist her; in this capacity, he would certainly have recorded on the doping form any irregularity that he had identified. The form shows that the representative signed it without making any comment.
116. For these reasons, the Panel comes to the conclusion that, apart from the statement of Dr Henry Aceituno, there is no objective fact that leads to the conclusion that there was a departure from the IST during the doping control process conducted on March 11, 2012 which could have caused the AAF.
117. Furthermore, the Appellant alleges that Cast kits are not reliable, as they are not tamper evident; she refers to the Cast kit brought by Dr Bernardino Santi before the FIE Tribunal at the hearing of September 12, 2012. As stated in the Appealed Decision, Dr Santi asked the FIE Tribunal to observe that the sample vessel was not closed in a plastic film; moreover, the members of the Tribunal tried to seal the A and B sample containers with the sealing mechanism, in vain. Therefore, the kit used did not meet the requirements of the IST.
118. It is recorded in the file that after the hearing of September 12, 2012 the FIE Tribunal decided to appoint a bailiff in order to officially check the reliability of a Cast kit and was provided with a specimen similar to the one used for Ms Bulcão's sample collection. The bailiff stated that it was easy to manipulate the sealing mechanism for the red cylinder and rather difficult for the blue one; nevertheless, once sealed, it appeared impossible to open the cylinder's lid without cutting the sealing link.
119. At the hearing of May 13, 2013, Dr Henry Aceituno stated that during his numerous doping controls in his capacity of official DCO, he is accustomed to using both Bereg kits and CAST kit. Although he prefers to use Bereg kits for practical reasons, he confirmed that CAST kits are tamper evident and totally reliable.

120. Furthermore, the Panel is of the opinion that should the kit trademark CAST not be reliable, because not tamper evident, that would be known and it would not be used anymore for anti-doping controls.
121. For these reasons, the Panel comes to the conclusion that the Appellant could not establish that the use of a Cast kit for her sample collection constituted a departure from the IST which could reasonably have caused the AAF.
122. Last, the Appellant alleges that during the delay of over 30 days between the day of the sample collection and the date of its transportation to the Havana Laboratory, any break in the chain of custody could have happened, as the Athlete's urine could have been tampered or contaminated by any possible means.
123. Regarding the storage conditions, all witnesses stated that, when having the urine samples under their control, they checked that the cylinders were properly sealed. So, that at each stage of the storage - i.e. from the doping control station to the Venezuelan NADO, then from these Offices to the Commissioner and finally when given to the Havana Laboratory - each person responsible could confirm that the cylinders were intact and that the urine samples were stored in strict accordance with the IST. Therefore:
  - (i) Dr Henry Aceituno, responsible for the samples from the collection to the delivery to the Venezuelan Offices, had been provided for with an adequate refrigerator in his hotel room to store the samples in accordance with the IST until they were given to the Venezuelan Commission on March 13, 2012,
  - (ii) Ms Norma Caruso, DCO of the Venezuelan Commission, who received the isothermic bag containing the bottles of urine samples from the hands of Mr Aceituno, had checked that the seals of blue colour were intact, which had been the case; then, as the samples were to be stored, they had been immediately frozen at a temperature of -15°C,
  - (iii) Mr Eduardo Gutierrez, another DCO of the Venezuelan Commission had also checked that all seals of all cylinders were intact; during the storage, which lasted for 30 days, he regularly controlled that they were kept frozen; then, the samples had also been transported frozen to the Havana Laboratory.
124. The result of all this is that the Panel is satisfied there was no breach in the chain of custody from the day of the urine collection until its analysis by the Laboratory, as the seals of the cylinders containing the bottles with Ms Bulcão's urine samples had always been intact and as the samples had been kept frozen, in accordance with the IST.
125. Regarding the delay of more than 30 days between the date of the urine sample collection and the date the samples arrived at the Havana Laboratory, it is true that such delay does not respect the 14 days time limit provided for in article 5.9.1.9 of the FIE Rules. However, such a departure from the Rules does not lead to the nullity of the result of the analysis performed. (see *CAS 2009/A/2018* where the delay between the urine collection and the arrival of the

samples to the laboratory had been of more than two months). That would only be the case, should Ms Bulcão reasonably demonstrate that such delay had been the origin of the AAF.

126. As explained above, there was no breach in the chain of custody and the samples were always carefully kept, stored and transported in accordance with the IST. Moreover, the IRMS analysis performed by the Cologne Laboratory showed that the boldenone found in Ms Bulcão's urine was of exogenous origin; that means that the substance had not been produced by internal conversion without external contribution.
127. Therefore, should the delay of 34 days have been irregular, the Panel is satisfied it would have had no effect on the integrity of Ms Bulcão's urine samples, and could not have caused the AAF.
128. The Appellant alleges that she may be victim of a plot and that somebody may have manipulated her samples. In this regard, the FIE Tribunal ordered a comparison between Ms Bulcão's DNA profile and the profile obtained from urine sample no 04416A. The result of the Lausanne Laboratory was that both profiles had the same genetic characteristics and the Laboratory came to the conclusion that the urine sample 04416A was Ms Bulcão's with a likelihood ratio greater the 1 billion.
129. On his part, Dr Hans Geyer stated, at the hearing of May 13, 2013, that the analysis of the urine sample no 04416 did not reveal the presence of the DNA of a second person. Moreover, he explained that in his opinion the mixture of the sample 04416 with another urine sample containing ATD could be deemed as impossible and that ingestion of ATD was the only reasonable explanation.
130. Therefore, it appears impossible that Ms Bulcão's urine sample could have been mixed, tampered with or contaminated; furthermore, the Appellant does not give any reason why she would have been victim of a conspiracy.
131. In light of the foregoing, the Panel holds that the Appellant failed to establish that, if occurred, a departure of the IST could have caused the AAF; thus, the sample collection process was duly conducted according to the IST and the FIE Rules.
132. Therefore, the presence of the prohibited substances boldenone and ATD of exogenous origin in the Appellant's sample is established and it is undisputable that the Appellant committed an anti-doping rule violation.

**B. Possible reduction of the sanction?**

133. In case of an anti-doping rule violation, the sanction imposed by article 10.2 of the FIE Rules is a two years period of ineligibility for the first violation.
134. In the case in point, it is undisputed that it was the first anti-doping rule violation committed by the Appellant.

135. As a preliminary point, the Appellant submit that the FIE Tribunal erred by basing its decision exclusively on the use of boldenone and not on the use of ATD. It emerges however from the appealed decision that the FIE tribunal examined in detail the question of a possible reduction of the suspension based on article 10.4 of the FIE Rules and resulting from the application of ATD which is a specified substance and came to a negative conclusion. This grievance is therefore without grounds.
136. Then, the Appellant claims that she should be granted a reduction of the imposed sanction based on article 10.4 of the FIE Rules as, even if she does not know how and when she could have taken ATD, she never intended to enhance her performance.
137. According to article 10.4 of the FIE Rules, two conditions must be met to allow for the possibility of a reduction of the period of ineligibility. The fencer must (i) establish by a balance of probability how the specified substance entered his/her body and (ii) establish to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance. These two conditions are cumulative.
138. Article 10.4 of the FIE Rules applies only in those cases where the hearing panel is satisfied by the objective circumstances of the case that the Fencer in taking a prohibited substance did not intend to enhance her sport performance. While this absence of intent must be established to the comfortable satisfaction of the panel, the fencer may establish how the specified substance entered her body by a balance of probability.
139. In the case at hand, the Panel can only take note that Ms Bulcão never could and still cannot explain how and when she could have taken ATD and thus how the specified substance entered her body. The Panel tried to find an explanation when she declared, at the hearing of May 13, 2013, that she had been taking a nutritional supplement called Materna with the consent of her physician, Dr Santi, which was confirmed him. Dr Santi provided for the Panel with the analytic report of Materna's composition which showed that it contains exclusively various vitamins and mineral salts; such a nutritional supplement could thus not be the source of the presence of ATD
140. Without any explanation, it is impossible for the Panel to determine whether the required standard of probability is reached or not, as to how the prohibited substance entered her system. In such circumstances, the Panel can only take note that Ms Bulcão does not fulfil the first of the two cumulative conditions and has no other possibility than to conclude that article 10.4 of the FIE Rule does not apply, without having to examine whether the Appellant had or not the intent to enhance her sport performance.
141. The same reasoning applies to article 10.5.1 and article 10.5.2 of the FIE Rules which stipulates that, in case of presence of a prohibited substance, the fencer must first establish how the prohibited substance entered his/her system and, second, that he/she bears no fault or negligence (or no significant fault or negligence).
142. As Ms Bulcão cannot explain how the substance ATD entered her body, she cannot claim a reduction of the suspension based on article 10.5, alleging that she has committed no fault or

negligence; in this regard, she put forward, amongst others, her youth, her strict compliance with the food and vitamins prescribed by her physicians, her social situation, her position as a young Brazilian fencer and the impacts of a suspension on her career and on her earnings. Nevertheless and for the foregoing reason, the Panel shall not get into a discussion on these aspects, only pointing out that article 10.5 of the FIE rules are meant to have an impact only when the circumstances are truly exceptional and not in the vast majority of cases; the CAS awards put forward by the Appellant are therefore not relevant.

143. For the above reasons, the Panel holds that Ms Bulcão cannot benefit of any reduction of the sanction imposed by the FIE Tribunal and that the two (2) year term of ineligibility must be confirmed.

### **C. Start of the Period of Ineligibility**

144. According to article 10.9 and 10.9.1 of the FIE Rules, the period of ineligibility starts on the date of the hearing decision providing for ineligibility or may start at an earlier date commencing as early as the date of the sample collection in case there has been substantial delay in some aspects of the Doping Control not attributable to the Fencer (see *CAS 2009/A/1759*; *CAS/2011/A/2615*).
145. In the case in point, 34 days elapsed between the day of the sample collection and the day where the samples reached the Havana Laboratory, due to an agreement between the Venezuelan NADO and the Havana Laboratory. Such a delay is in no account not imputable to the Appellant and has, above all, been considered by the Panel as irregular and not in accordance with Article 5.9.1.9 of the FIE Rules (see above § 124). Therefore, the Panel deems it fair to apply the principle set forth in Article 10.9.1 of the FIE Rules and start the period of ineligibility 30 days before June 6 2012, date fixed by the FIE Tribunal.
146. The Panel decides that Ms Bulcao's suspension will run from May 6 2012; therefore, the appeal is partially upheld and the FIE decision is modified in respect to the starting date of Ms Bulcao's period of ineligibility.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Ms Ana Beatriz Di Rienzo Bulcão on January 23, 2013 is partially upheld.
2. Ch. 2 Part 2 of the Decision of the FIE Doping Disciplinary Tribunal dated January 7, 2013 is modified as follows:  

Ms Ana Beatriz Di Rienzo Bulcao is automatically disqualified of her results in the Pan-American Fencing Championships of March 2012 and is ineligible to compete for a period of two years starting from May 6 2012.
3. (...).
4. (...).
5. All other and further claims or prayers for relief are dismissed.